

# THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS: REFORM AND THE QUESTION OF UNIVERSALITY

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I.	INTRODUCTION.....	409
II.	REFORMING THE IACHR.....	410
III.	THE QUESTION OF UNIVERSALITY.....	416
	A. <i>The Conference of States Parties</i> .....	416
	B. <i>Location of the Headquarters of the IACHR</i> .....	419
IV.	CONCLUDING REMARKS ON SOVEREIGNTY.....	422

## I. INTRODUCTION

On September 12, 2014, the Organization of American States (OAS) adopted a Strategic Vision to design and provide guidance to States on points of emphasis to be pursued for the future.<sup>1</sup> The Strategic Vision owes its formulation in part to the work of the OAS Secretariat guided by Secretary General Jose-Miguel Insulza, and months of intense effort by member States of the OAS Permanent Council.<sup>2</sup> In the work of the Permanent Council giving rise to the Strategic Vision document, Mexico played a significant part in bringing States with divergent perspectives to shared positions.<sup>3</sup> At its core, the Strategic Vision affirms that the four pillars of the OAS—Democracy, Human Rights, Integral Development and Multidimensional Security—shall be regarded as strategic objectives of the

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1. See generally Organization of American States (OAS), G.A. Res. AG/RES.1 (XLVII-E.14), OAS Doc. OEA/Ser.P (Sept. 12, 2014).

2. See Press Release, Organization of American States General Assembly Adopts Resolution on Strategic Vision with a View to Adopting the Organization to the Challenges of the 21st Century (Sept. 12, 2014), available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-370/14](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-370/14) (last visited Jan. 23, 2015) [hereinafter Challenges of the 21st Century]; see generally Jose-Miguel Insulza, Sec'y Gen., Remarks by the OAS Secretary General at the Forty-Seventh Special Session of the General Assembly on Strategic Vision (Sept. 12, 2014), available at [http://www.oas.org/en/about/speech\\_secretary\\_general.asp?sCodigo=14-0037](http://www.oas.org/en/about/speech_secretary_general.asp?sCodigo=14-0037) (last visited Jan. 23, 2015).

3. See Challenges of the 21st Century, *supra* note 2.



organization, and directs the OAS to strive for "harmonious interdependence" among the pillars.<sup>4</sup>

Thus, according to the Strategic Vision of the organization, all States attach considerable significance to the promotion and protection of human rights and pledge to enhance human rights through the mechanisms of the OAS.<sup>5</sup> But, although the language of the Strategic Vision gives a position of prominence to human rights within the OAS, in some respects this pillar of the organization remains subject to uncertainty and debate. Recent developments within the OAS system—some of which may owe their origins to sharply divergent perspectives among Member States—give force to this contention.<sup>6</sup>

Against this background, the present article examines recent reform initiatives that have been proposed for the Inter-American Commission on Human Rights (IACHR), and analyzes certain points of tension that have become increasingly apparent among OAS Member States. The article begins with a brief review of recent efforts to reform the IACHR, from the viewpoint of OAS Member States. It then discusses initiatives pursued by some States under the rubric of the Assembly of States Parties, especially including proposals to promote universal participation of States within the IACHR. The article concludes with brief comments of the apparent tension between human rights protection and State positions based on sovereignty.

## II. REFORMING THE IACHR

In the period between June 2011 and March 2013, the OAS Permanent Council undertook a review of the work of the IACHR in light of mandates presented by the General Assembly of the OAS at its forty-first Regular Session in Bolivia.<sup>7</sup> At broadly the same time as the Permanent Council's review, the IACHR also considered changes to its Rules of Procedure, and modified certain rules during its 147<sup>th</sup> Regular Period of Sessions, held from 8 to 22 March 2013.<sup>8</sup> The result was that, by March 2013, the IACHR

4. OAS G.A. Res. AG/Res1 (XLVII-E.14), *supra* note 1, at 3 para.1 Annex I and II.

5. *Id.* at 4, para. IV Annex 1; *see also id.* at 8 para. IV Annex II.

6. *See also* Rep. Lawrence J. Gumbiner, Address to the World Affairs Council of Charlotte (Apr. 4, 2014), available at [http://www.usoas.usmission.gov/wac\\_charlotte/](http://www.usoas.usmission.gov/wac_charlotte/) (last visited Jan. 23, 2015).

7. *See e.g.*, Organization of American States (OAS) G.A. AG/Res.2673 (XLI-O/11) OAS Doc. OES/Ser.P 220 (June 7, 2011).

8. *See* Press Release, Org. of American States (OAS) IACHR, IACHR Approves Reform of its Rules of Procedure, Policies and Practices (Mar. 19, 2013) available at [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/019.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/019.asp) (last visited Jan. 23, 2015).



was aware that it would be subject to a number of new rules.<sup>9</sup> For some States, the rules prompted by the discrete efforts of both the Permanent Council<sup>10</sup> and the IACHR should have allowed the IACHR to proceed with its work without further reform discussions for the present; other States, however, wished to pursue additional efforts concerning the IACHR.<sup>11</sup> There are, therefore, divergent perspectives on the question whether further reforms need to be implemented with respect to the IACHR, and this provides important context for the present discussion on recent developments in the OAS Human Rights system.

Within the OAS Permanent Council, the main issues of reform considered by States leading up to March 2013 included the following:

- (a) funding of the work of the IACHR;
- (b) the treatment of Rapporteurships;
- (c) precautionary measures;
- (d) criteria for inclusion of States in Chapter IV of the IACHR's annual report; and
- (e) the question of universality.<sup>12</sup>

The issues considered under the heading (a) to (d), though not necessarily settled at this time, have not been the subject of extensive consideration in the Permanent Council since March 2013. They are, therefore, considered very briefly and in broad terms in the present discussion.

With respect to funding of the IACHR, there are, generally, two primary sources of concern. One is that the IACHR is consistently underfunded within the Regular Budget of the OAS.<sup>13</sup> This underfunding is

9. See INTER-AM. COMM'N H.R., Res. 1/2013 Reform of the Rules and Procedure, Policies and Practices, available at <https://www.oas.org/en/iachr/decisions/pdf/Resolution1-2013eng.pdf> (last visited Jan. 6, 2015).

10. Timothy Gill, *ALBA Proposals for Reform of IACHR Rejected, but Criticism Continues*, VENEZ. POLITICS AND HUM. RTS. (July 23, 2012), <http://venezuelablog.tumblr.com/post/56236664139/alba-proposals-for-reform-of-iachr-rejected-but> (last visited Jan. 23, 2015); see Org. of American States (OAS), G.A. Res. AG/RES.1 (XLIV-E/13), OAS Doc. OEA/Ser.p (July 23, 2013).

11. See Gill, *supra* note 10.

12. See generally Org. of American States (OAS) Permanent Council Res. CP/INF. 6604/12 OAS Doc. OEA/Ser.G (Nov. 30, 2012) [hereinafter *Compendium of Proposals by OAS Member States*]. A helpful summary presentation of the main proposals offered by States on these issues and others.

13. *Program-Budget of the Organization*, ORG. OF AMERICAN STATES 33 (2012), available at [http://www.oas.org/budget/2012/Approved%20Program%20Budget%202012%20ENG%20\\_%20No%20posts.pdf](http://www.oas.org/budget/2012/Approved%20Program%20Budget%202012%20ENG%20_%20No%20posts.pdf) (last visited Jan. 23, 2015) (From among the programmatic activities of the OAS for the Year 2012, approximately 7% of the overall budget (approximately 10.5 million dollars) was allocated to human rights matters; the bulk of this sum was allocated to the IACHR and the Inter-American Court



reflected, for instance, in the fact that there is a pronounced backlog in the work of the Commission,<sup>14</sup> and in the freezing of posts within the Secretariat of the Commission. It is also reflected in the fact that the Regular Budget has had to be supplemented by contributions to Specific Funds in the Budget: these Specific Fund contributions come not only from OAS Member States, but also from OAS Observer States and from non-governmental entities.<sup>15</sup> It is open to OAS Member States to resolve this aspect of the funding question by voting for an appropriate increase to the Regular Budget.<sup>16</sup> This approach received verbal support from the General Assembly in March 2013, but to date it has not been reinforced in practical terms.<sup>17</sup>

The second source of funding concern relates to the question of external influence over the work of the IACHR. Specifically, the concern is that the Commission, by accepting direct contributions from foreign countries and non-governmental entities, is vulnerable to unwarranted external influence.<sup>18</sup> To support this perspective, it may be argued that donors to the IACHR have direct control in determining the destination of

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for Human Rights. In that year, approximately 16% of the overall budget was allocated to Democracy and Governance and Multidimensional Security each, and approximately 24% to Integral Development); *Program-Budget of the Organization*, ORG. OF AMERICAN STATES 36 (2013), available at [http://www.oas.org/budget/2013/APPROVED\\_Program\\_Budget\\_2013.pdf](http://www.oas.org/budget/2013/APPROVED_Program_Budget_2013.pdf) (last visited Jan. 23, 2015) (For 2013, approximately 8.4% of the overall budget was allocated to human rights matters, while approximately 17%, 18%, and 23% of the budget were allocated to Multidimensional Security, Democracy and Governance and Integral Development, respectively).

14. See Compendium of Proposals by OAS Member States, *supra* note 12, at 107 (for the United States, resource constraints constitute a factor in the backlog of the IACHR's work, but non-financial considerations contribute to the problem).

15. Org. of American States (OAS) Permanent Council Res. GT/SIDH-17/11 rev. 1 OAS Doc. OEA/Ser.G (Nov. 7, 2011) [hereinafter *Compilation of Presentations by Member States*]; see *Program-Budget of the Organization* (2012), *supra* note 13, at 65 (For the Year 2012, the sum projected to finance the IACHR was approximately 7.8 million dollars; of this sum, approximately 4 to 8 million dollars was to be sourced from Regular Funds and 3 million dollars from Specific Funds); see also *Program-Budget of the Organization* (2013), *supra* note 13, at 67. (In 2013, the sum projected to finance the IACHR was approximately 6 to 7 million dollars, with 5.3 million dollars to be sourced from Regular Funds and 2.3 million dollars from Specific Funds); PETER J. MEYER, CONG. RESEARCH SERV., R42639, ORGANIZATION OF AMERICAN STATES: BACKGROUND AND ISSUES FOR CONGRESS 5 (2014), available at <https://www.fas.org/sgp/crs/row/R42639.pdf> (last visited Feb. 5, 2015).

16. MEYER, *supra* note 15, at 4.

17. See OAS G.A. Res. AG/RES. 1 (XLIV-E/13), *supra* note 10, at 2, ¶ 5; see Compendium of Proposals by OAS Member States, *supra* note 12, at 11–12 (in the Permanent Council deliberations on funding the IACHR, Argentina proposed this approach, as a medium-term solution).

18. See generally Compendium of Proposals by OAS Member States, *supra* note 12, at 170–71 (noting the comments by Nicaragua).



their contributions. So, the argument continues, agencies external to the OAS membership have an inordinate impact on the areas of emphasis in the Commission.<sup>19</sup> This criticism of the Commission's funding arrangements dovetails substantially into the question of the treatment of Rapporteurships, listed above as item (b); in the view of some States, disproportionate funding is dedicated to the Rapporteurship on Freedom of Expression when compared with other Rapporteurships set up by the Commission.<sup>20</sup> This disproportionate funding, it is sometimes suggested, means that in practice there is undue emphasis on freedom of expression at the Commission, and that certain countries face unfair scrutiny from the Commission in the area of free expression.<sup>21</sup>

Again, this problem—relating then to both funding and Rapporteurships—could be resolved by greater contributions to the Regular Fund by OAS Member States. But, in the absence of greater Member State contributions in this area, the problem has persisted.<sup>22</sup> For some critics of the *status quo*, external contributors should be barred from earmarking their donations to the OAS Human Rights System:<sup>23</sup> thus, contributions would be made to a common pool, with the IACHR assuming the responsibility of allocating how those contributions would be utilized. Though this approach would offer full respect to the autonomy of the IACHR, it would face a familiar risk.<sup>24</sup> Some external donors are motivated in their giving by the desire to exercise influence in particular areas of activity.<sup>25</sup> For this reason, it is likely that if the donors cannot expressly earmark their funds for specific purposes, the wellsprings of external contributions could run dry. With this practical consideration in mind, the OAS General Assembly has indicated a preference for funds to be contributed without earmarking by external donors, but it has not sought to make this approach mandatory.<sup>26</sup> The *status quo* leading up to March 2013 has, in effect, remained largely unchanged.

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19. See generally Gill, *supra* note 10.

20. See *In Depth: OAS General Assembly*, AMERICASQUARTERLY.ORG, <http://www.americasquarterly.org/content/iachr-reform-depth> (last visited Jan. 23, 2015).

21. *Id.*

22. MEYER, *supra* note 15, at 24.

23. See e.g., Proposals by the Delegation of Ecuador, Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the Inter-American Human Rights System OEA/Ser.G/GT/SIDH/INF.46/11 I (Dec. 5, 2011).

24. See *In Depth: OAS General Assembly*, *supra* note 20.

25. See also MEYER, *supra* note 15, at 5.

26. See OAS General Assembly Resolution AG/RES. 1 (XLIV-E/13), *supra* note 10, at 2 ¶ 5.



In regards to precautionary measures, mentioned as item (c) above, the main point of criticism in the period leading up to March 2013 turned on the circumstances in which the IACHR is authorized to place restraints on sovereign States.<sup>27</sup> In substance, most States accepted that the IACHR was empowered to order precautionary measures in serious and urgent situations.<sup>28</sup> They suggested, however, that, in practice, these measures were sometimes being adopted by the Commission without objective, transparent consideration of the different interests involved in each case.<sup>29</sup> With regard to the approach taken by the Commission to the Belo Monte Project in Brazil was said to exemplify the problem.<sup>30</sup> In effect, the precautionary measures in this case sought the suspension of a major development project in Brazil, at a time when the Government of Brazil had, as a matter of national policy, committed financial and political capital to the Project.<sup>31</sup> Mindful of this line of criticism, the IACHR has adopted amendments to its Rules of Procedure, effective August 1, 2013.<sup>32</sup> The amendments seek to clarify the circumstances in which precautionary measures may be taken, and now stipulate that decisions relating to such measures "shall be adopted through reasoned resolutions."<sup>33</sup> Time and practice will reveal whether the Commission's approach to precautionary measures becomes more or less restrictive.

A related issue concerning precautionary measures remains outstanding: are precautionary measures authorized by OAS Member States? In the view of the IACHR, precautionary measures are fully authorized both because relevant OAS instruments support this conclusion and because the efficacy of the Inter-American Human Rights System is safeguarded or enhanced by precautionary measures.<sup>34</sup> The Commission also argues that precautionary measures—granted in "serious and urgent

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27. See generally *Rules of Procedure of the Inter-American Comm'n. on Hum. Rts.*, Inter-Am. Comm'n H.R., 147th Regular Period of Sessions (2013), available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Feb. 7, 2015).

28. See e.g., *Compendium of Proposals by OAS Member States*, *supra* note 12, at 164; for reservations, see also *Program-Budget of the Organization*, *supra* note 13 at 79, 225 (Ecuador and Venezuela, respectively).

29. See e.g., *Program-Budget of the Organization*, *supra* note 13, at 3 (Arg.), 17-19 (Braz.), 35-6 (Can.), 64-5 (Costa Rica) and 110 (U.S.).

30. Indigenous Communities of the Xingu River Basin, Para., Braz., Inter-Am. Comm'n H.R., PM 382/10, Chapter III, 77-78, ¶ 32-33 (2011).

31. *Id.*

32. *Rules of Procedure*, *supra* note 27.

33. *Id.* at art. 25(7).

34. See generally *id.* at art. 25.



situations presenting a risk of irreparable harm”—are common practice within the realm of international human rights law.<sup>35</sup> No doubt, the mechanism for precautionary measures assists in important ways to prevent abuse of human rights in individual cases. But, the question remains whether they have been authorized by the States which accept the jurisdiction of the IACHR. To be sure, precautionary measures are unequivocally authorized in cases falling within the scope of the Inter-American Convention on Forced Disappearance of Persons, for Article XIII of that treaty expressly grants this power to the IACHR.<sup>36</sup> Beyond this, however, the matter is not entirely resolved. The Commission's perspective carries some force, and is strengthened by the fact that most, if not all, OAS Member States have implicitly accepted that the Commission is empowered to recommend precautionary measures—this seems to be the better view. On the other hand, save for the case of the Inter-American Convention on Forced Disappearance of Persons, the same States have not expressly incorporated reference to precautionary measures in various human rights instruments, though they have had ample opportunity to recognize precautionary measures in their instruments.<sup>37</sup>

With reference to item (d) noted above, the IACHR has traditionally included, in Chapter IV of its *Annual Report*, a discussion under the heading “Development of Human Rights in the Region.”<sup>38</sup> One feature of this chapter has been the identification of OAS Member States that have been “the focus of special attention of the Commission.”<sup>39</sup> The States so identified are, in effect, vulnerable to the charge that they have systematically failed to satisfy basic human rights or have participated in egregious conduct.<sup>40</sup> The Commission's decision to place a State in Chapter IV, therefore, carries important political implications. At the very least, it amounts to an accusation of serious delinquency in human rights matters on the part of the State. For this reason, some States in the OAS Permanent Council have sought to change the Commission's practice in respect of Chapter IV, arguing, at one end of the spectrum, that the practice

35. *Id.*

36. Inter-American Convention on Forced Disappearance of Persons, 33 I.L.M. 1429 (1994), entered into force March 28, 1996, available at [www1.umn.edu/humanrts/instrree/forceddisapp.html](http://www1.umn.edu/humanrts/instrree/forceddisapp.html) (last visited Feb. 7, 2015).

37. See generally Rules of Procedure, *supra* note 27, at art. 25.

38. IACHR 2012 *Annual Report*, INTER-AM. COMM'N H.R. (Mar. 5, 2013), available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp> (last visited Jan. 23, 2015).

39. *Id.* at 305.

40. *Id.* at 306.



of identifying States of special concern should be terminated.<sup>41</sup> In response to State criticism, the IACHR, in its revised Rules of Procedure, has changed aspects of Chapter IV.<sup>42</sup> Thus, pursuant to the revised Article 59 of the Rules of Procedure, the Commission is authorized to include in a new Section A, an "annual overview of the human rights situation in the hemisphere;" this overview shall identify "the main tendencies, problems, challenges, progress and best practices" of States in human rights matters.<sup>43</sup> At the same time, however, the Commission retains, in Section B, the practice of identifying States of special concern.<sup>44</sup> The criteria for including a State in this especially negative category, set out in Article 59(6) of the revised Rules of Procedure, may prompt continued criticism of Chapter IV on the part of some States in the Permanent Council; this, though, could be contingent upon future practice of the Commission relating to Chapter IV.

With the passage of time, States will presumably respond to the ways in which the Commission implements its new Rules of Procedure, which took effect in August 2013.<sup>45</sup> To date, there has been no collective, systematic analysis by OAS Member States of the ways in which the new rules relating to items (a) to (d) above have been applied in practice. This may then be a period of "wait and see" concerning items (a) to (d). In contrast, item (e), on the question of universality, has been the subject of considerable State activity since March 2013. A number of OAS States have devoted considerable effort to finding ways of promoting greater universality within the Inter-American Human Rights System. These efforts merit significant attention, and form the core of the discussion in Section III below.

### III. THE QUESTION OF UNIVERSALITY

#### A. *The Conference of States Parties*

In March 2013, a number of OAS Member States accepted an invitation from the Government of Ecuador to participate in a Conference

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41. INTER-AM. COMM'N H.R., Res. 1/2013, *supra* note 9, at 231–33.

42. *Id.* at note 21.

43. *Rules of Procedure*, *supra* note 27, at art. 59(e)(i).

44. *Id.* at art. 59(e)(ii).

45. *Id.*



of States Parties to the American Convention on Human Rights.<sup>46</sup> This meeting resulted in the Declaration of Guayaquil, adopted on March 11, 2013,<sup>47</sup> and set the stage for three subsequent meetings of OAS Member States under the rubric of the Conference of States Parties. These meetings, held in Cochabamba, Bolivia;<sup>48</sup> Montevideo, Uruguay;<sup>49</sup> and Port-au-Prince, Haiti,<sup>50</sup> in May 2013, January 2014, and May 2014, respectively, have expressly pursued the objective of increasing participation of OAS Member States in the Inter-American System of Human Rights.<sup>51</sup> In the quest to promote universality, the Conference of States Parties has concentrated primarily on possible ways of encouraging non-parties to the American Convention on Human Rights to ratify this treaty, and on having more States accept the compulsory jurisdiction of the Inter-American Court of Human Rights. At present, of the thirty-five Member States of the OAS, twenty-four are parties to the American Convention on Human Rights,<sup>52</sup> and twenty-one recognize the Court's jurisdiction.<sup>53</sup> This situation has prompted strong criticism by some States. The lack of universality is said to be a manifestation of limited commitment to human rights on the part of some governments, and to reflect inequality among States, with some States accepting greater levels of commitment to human rights than others.<sup>54</sup>

In significant respects, the Declaration of Guayaquil provided a manifesto for the work of the Conference of States Parties. On the question

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46. See generally *Conference of States Parties to the American Convention on Human Rights Declaration of Guayaquil*, ECUADOR MINISTRY OF INT'L RELATIONS AND HUM. MOBILITY (Mar. 11, 2013), available at [http://cancilleria.gob.ec/wp-content/uploads/2013/05/conferencia\\_estados\\_partes\\_doc\\_eng.pdf](http://cancilleria.gob.ec/wp-content/uploads/2013/05/conferencia_estados_partes_doc_eng.pdf) (last visited Jan. 23, 2015).

47. *Id.*

48. *Id.*

49. *IACHR 2012 Annual Report*, *supra* note 38.

50. *Third Conference of State Parties to the American Convention on Human Rts.*, [CANCILLERIA.GOB.EC] [ECUADOR MINISTRY OF INT'L RELATIONS AND HUM. MOBILITY] Declaration of Montevideo at ¶ 5.

51. *Id.*

52. *American Convention on Human Rights, "Pact of San Jose", Signatories and Ratifications*, DEPARTMENT OF INT'L. LAW (2014), available at [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm) (last visited Jan. 23, 2015).

53. See, e.g., OAS Press Release, INTER-AM. COMM'N H.R., IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention (Sept. 10, 2013), available at [http://www.oas.org/en/iachr/media\\_center/Preleases/2013/064.asp](http://www.oas.org/en/iachr/media_center/Preleases/2013/064.asp) (last visited Jan. 23, 2015) (Since June 2010, Venezuela has withdrawn from the American Convention on Human Rights and from the jurisdiction of the Inter-American Court for Human Rights).

54. Compilation of Presentations by Member States, *supra* note 15, at 6-7.



of universality, States supporting this Declaration agreed on the following, *et alia*:

- A delegation of Foreign Ministers was authorized "to make direct overtures" to non-parties to the American Convention on Human Rights with a view to prompting accession by non-parties;
- Preference should be given to "having the members of the commission elected from among nationals of the countries that have ratified the American Convention";
- Consideration should be given to "the advisability of having the seat of the Inter-American Commission on Human Rights located in a state party to the American Convention on Human Rights"; and
- The Conference of States Parties should become a "permanent forum for dialogue" on human rights issues.<sup>55</sup>

In the subsequent Declarations, the States concerned sought to put in place ideas to promote universality, adopting the carrot and stick approach inherent in the Declaration of Guayaquil. The carrot manifested itself, for instance, in the establishment of a special committee of ministers of foreign affairs to visit non-parties to the American Convention for consultations,<sup>56</sup> organization of a forum to strengthen and promote universality,<sup>57</sup> and continued dialogue among parties, non-parties and civil society.<sup>58</sup> On the other hand, the stick was evident in proposals which reinforced the idea that some form of penalty should be applied within the Inter-American rights system to non-parties to the American Convention. For example, the notion that nationals of States parties should be shown favor in elections for members of the Commission, was reiterated whenever the subsequent Declarations routinely affirmed the Declaration of Guayaquil.<sup>59</sup> This would have the effect of penalizing nationals of non-parties in elections for the Commission. The stick was also expressly and repeatedly reiterated in the pronouncements that considered the advisability of removing the headquarters of the IACHR from its location in a country that is not party to the American Convention on Human Rights.

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55. Declaration of Guayaquil, *supra* note 46.

56. Rules of Procedure, *supra* note 27.

57. Declarations and Resolutions Adopted by the General Assembly, G.A. Res. AG/doc.5329/12 at para. 1 (June 5, 2012) [hereinafter Declaration of Cochabamba].

58. Declaration of Montevideo, *supra* note 50, at ¶ 5, 8–9.

59. See the rubric to the operative paragraphs in the Declarations of Cochabamba, Montevideo and Port-au-Prince, respectively.



B. *Location of the Headquarters of the IACHR*

Building on the terms of the Declaration of Guayaquil, the Second Conference of States Parties at Cochabamba noted agreement among the participating States:

To pursue its consideration of the advisability of having the headquarters of the IACHR located in a state party to the American Convention on Human Rights, by creating an open-ended working group, headed by Uruguay and Ecuador, to identify the budgetary, regulatory, and operational challenges, inter alia, of the transfer . . . .<sup>60</sup>

In the same vein, the States at the Third Conference of States Parties at Montevideo accepted a report on the change of venue of the IACHR Headquarters,<sup>61</sup> and sought to “deepen” this report on the best ways to assess the “consequences and requirements of a possible change of venue.”<sup>62</sup> The Montevideo Declaration also invited States parties to the American Convention “to express interest in permanently hosting the IACHR.”<sup>63</sup> Then, at the Fourth Conference of States Parties in Port-au-Prince, the States declared that they welcomed the offer of Haiti’s President Martelly for his country to serve as headquarters of the IACHR and agreed to consider this offer.<sup>64</sup> Again, at Port-au-Prince, the States also “underscore(d) their resolve to continue deepening the efforts made in the political, economic, and legal analysis of a possible change of IACHR headquarters.”<sup>65</sup>

The location question has, therefore, been central to the deliberations of the Conference of States Parties. At least some States participating at various meetings of the States Parties appear committed to the view that the headquarters of the IACHR should be relocated from Washington D.C. This perspective is not universally accepted among Member States of the OAS. In the first place, some States argue that there is no reason in principle for the United States to be penalized for not being a party to the American Convention. Under the arrangements relating to the IACHR, the United States of America—though a non-party to the Convention—remains subject to the jurisdiction of the IACHR. This arises from the fact that the

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60. Declaration of Cochabamba, *supra* note 57, ¶ 2.

61. Declaration of Montevideo, *supra* note 50, ¶ 1.

62. *Id.* at ¶ 2.

63. *Id.* at ¶ 3.

64. *Id.*

65. *Id.*



American Declaration on the Rights and Duties of Man<sup>66</sup> is applicable to the United States; so, the IACHR offers recommendations on human rights issues in the United States in much the same way that it does *vis-à-vis* parties to the American Convention.<sup>67</sup> In the circumstances, it may be argued plausibly that relocating the headquarters from Washington D.C. would be a disproportionate penalty to apply to the United States for its failure to ratify the Convention: the United States is significantly involved in the work of the Commission.

Secondly, relocation would have negative implications for States other than the United States. Several smaller OAS Member States have diplomatic missions to the OAS in Washington D.C., but not in other countries that may be interested in housing the headquarters of the IACHR. These missions in Washington D.C. currently serve as a primary link between various countries and the Commission; to change the Commission from its established location would, in all likelihood, give rise to increased participation costs for some countries, and could actually reduce State participation in the work of the IACHR. Bearing in mind that the ostensible purpose of the relocation exercise is to promote universality, the possibility of reduced participation should provide an important warning to the Conference of States Parties. This set of considerations applies perhaps with greatest force to member States of the Caribbean Community (CARICOM), all of which have established links with the Commission through their Washington D.C.-based missions to the OAS.<sup>68</sup> Most of these countries do not have diplomatic missions in Haiti or in any of the countries in Latin America that might realistically vie to host the headquarters of the Commission.

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66. See generally *The American Declaration on the Rights and Duties of Man* (adopted by the Ninth International Conference of American States, Bogota, Colombia, 1948), INTER-AM. COMM'N H.R., available at <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm> (last visited Jan. 23, 2015).

67. See *Statute of the Inter-American Commission on Human Rights*, INTER-AM. COMM'N H.R. art. 20 (2011), available at <http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp> (last visited Jan. 23, 2015); IACHR, *Resolution No. 3/87, Case 9647, James Terry Roach and Jay Pinkerton (U.S.)*, at 46–49, Annual Report 1986–1987 (Sept. 22, 1987); *Report N 51/01 Case 9903 Rafael Ferrer-Mazorra et al. United States, April 4, 2001*, at 171 and 194, INTER-AM. COMM'N H.R. (Apr. 4, 2001); Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 14, 1989, Series A, No. 10, at 35–45.

68. All CARICOM Member States have Permanent Missions to the OAS in Washington D.C.; see e.g., *Member States*, ORGANIZATION OF AMERICAN STATES (2015), [http://www.oas.org/en/member\\_states/](http://www.oas.org/en/member_states/) (last visited Feb. 23, 2015).



Thirdly, the relocation effort seems to underestimate the value of the synergistic relationship that exists between the OAS headquarters and the IACHR. The Commission has been in place as a part of the OAS system since 1959,<sup>69</sup> and the shared location of the OAS and the Commission has meant, for example, that members of the Commission and the Secretariat of the Commission, have the opportunity to discuss human rights issues both formally and informally with the OAS Permanent Council and members of the Permanent Council, at the OAS headquarters. This, it may be noted, is in contrast with the Inter-American Court of Human Rights, based in Costa Rica: contact between the Court and the OAS Permanent Council is somewhat limited, not least because of the distance between the two institutions. It would be paradoxical if the effort to promote universality within the Inter-American Human Rights System were to reduce the interaction between the IACHR and the political branches of the OAS.

Fourthly, certain significant costs would be associated with relocation. The Commission currently comprises its seven members, together with a Secretariat with more than thirty professional members of staff.<sup>70</sup> The Commission has substantial archives, as well as established business and operational arrangements. A change of location would incur financial costs that would be difficult to justify. It would also, almost certainly, incur costs in terms of goodwill within the OAS. The United States currently retains responsibility for a significant portion of the expenses of the IACHR, and may reasonably be expected to react negatively to a change in the location of the organization; for the change would, in effect, require adjustment to basic arrangements. The United States has expended funds and efforts to host the Commission on one set of assumptions that have prevailed for more than fifty years—it would be reasonable for the United States to argue that a suitable foundation for such a significant change has not been established. It has not been shown, for instance, that the work of the Commission is hampered in important ways by its location in Washington D.C.

Lastly, as a political matter, it is unlikely that the effort to relocate the Commission will garner substantial support from the OAS Member States that are not parties to the American Convention on Human Rights. In addition to the United States, the States in this category include Canada, Venezuela and eight CARICOM countries. At least some of these countries can be expected to regard a vote to change the location of the headquarters

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69. See *What is IACHR?*, INTER-AM. COMM'N H.R. (2011), available at <http://www.oas.org/en/iachr/mandate/what.asp> (last visited Jan. 23, 2015).

70. See *id.*



of the IACHR as a vote against national interests. In addition to issues of cost, some of these States could be inclined to the view that a change of location would amount to a penalty against all countries that are not party to the American Convention. As noted above, the Guayaquil Declaration and the subsequent pronouncements from the Conference of States Parties support favorable treatment for nationals of States Parties to the American Convention over nationals of non-parties. This will, in all probability, be an important consideration for the non-parties, many of which could reasonably believe that a vote for relocation would also signal support for the broader idea that there are penalties to be associated with the sovereign decision not to become a party to the American Convention.

#### IV. CONCLUDING REMARKS ON SOVEREIGNTY

The issue of universality within the OAS is related to a broader theme concerning the promotion and protection of international human rights, namely the role of sovereignty in the resolution of human rights issues. All States within the OAS attach considerable significance to their sovereign independence even as they also seek to advance the human rights pillar within the OAS. In a number of instances, these twin objectives appear to be in conflict with each other, and give rise to tension or uncertainty among OAS Member States or between particular OAS Member States and the IACHR. The Inter-American Human Rights System is therefore challenged by the need to reconcile these two possibly conflicting sets of values.

With respect to universality, one approach is to suggest or imply that non-parties to the American Convention on Human Rights are in some senses delinquent in not becoming parties to the main treaty setting out the rights and duties of States in this area of the law. And, apparently starting with this premise, the Conference of States Parties has worked to provide incentives to ratification of the American Convention or—depending on one's perspective—to penalize non-ratification. It is submitted, however, that the approach taken by the Conference of States Parties tends to disregard the sovereign right of States to remain outside of particular treaty regimes if they so wish. This is not to suggest that OAS States may disregard, willy-nilly, the need to protect human rights within the hemisphere—that is not the case, for, as already noted, the American Declaration on the Rights and Duties of Man applies to non-parties to the American Convention. It is to suggest, however, that the OAS must be sensitive in its assessment of why some States may opt to remain outside the American Convention on Human Rights; and in making this assessment, the OAS should refrain from seeking to place political pressure on the States that choose to remain outside the treaty regime.



When this approach is taken, it may emerge that some States have good reasons to remain outside the conventional scheme. Some countries within the common law world may argue, for example, that they face internal constitutional obstacles to becoming full participants to the jurisdiction of the Inter-American Court of Human Rights. It is also possible that some non-parties to the American Convention on Human Rights still do not believe that they are fully recognized as important members of the Inter-American Human Rights System. In this regard, CARICOM States have a strong basis for argument. In the ten-year period leading up to March 2013, the IACHR, which has more than thirty professional members in its staff complement, employed only one full-time CARICOM national;<sup>71</sup> meanwhile, the Inter-American Court of Human Rights has no CARICOM nationals in its professional staff complement.<sup>72</sup> This situation has understandably prompted questions about fairness in the consideration of opportunities for CARICOM nationals, and has given support to the distinct perception that CARICOM human rights approaches are treated as an afterthought within the OAS system. In this environment, the only reasonable defense available to CARICOM countries may well be to refrain from ratifying the American Convention on Human Rights. You've marginalized me, why should I embrace your system: *tu quoque*. This could justifiably be the perspective of most CARICOM countries.

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71. Currently, two CARICOM nationals serve as members of the Commission. The Commissioners, who are elected for fixed terms, are to be distinguished from the full-time professional staff members at the Commission.

72. Nor is there any CARICOM national on the current bench.